

DEPARTMENT OF THE NAVY NAVAL INTELLIGENCE ACTIVITY 2000 PENTAGON **WASHINGTON, DC 20395-2000**

NIAINST 3820.1 NIA CSO 09 Oct 2020

NAVAL INTELLIGENCE ACTIVITY INSTRUCTION 3820.1

From: Director, Naval Intelligence Activity

Subj: INTELLIGENCE OVERSIGHT PROGRAM

Ref:

- (a) SECNAVINST 3820.3F
- (b) DoD Directive 5148.13 of 26 April 2017
- (c) E.O. 12333 as amended
- (d) DoD Directive 5240.01 of 27 August 2007, as amended
- (e) DoDM 5240.01, Procedures Governing the Conduct of DoD Intelligence Activities of 8 August 2016
- (f) DoD Regulation 5240.1-R, Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons of December 1982, as amended
- (g) SECNAVINST 5000.34F
- (h) Presidential Policy Directive-19 of 10 October 2012
- (i) MOU Between the Department of Defense and Department of Justice of 22 August 1995 "Reporting of Information Concerning Federal Crimes"
- (j) National System for Geospatial Intelligence (NSG) Instruction (NSGI) 1806 of 16 March 2011 "Domestic Imagery"

- Encl: (1) Definitions
 - (2) Responsibilities
 - (3) Quarterly Intelligence Oversight Report Format Template
 - (4) Intelligence Oversight Inspection Checklist

1. Purpose

- a. To establish policy and implement a system of program reviews, inspections, and reporting requirements for Intelligence Oversight to ensure proper implementation of policies, procedures, and governing regulations regarding the conduct of intelligence and intelligencerelated activities by elements and individuals of the Naval Intelligence Activity and its subordinate organizations.
- b. This instruction supersedes ONIINSTs 5240.1 and 5240.2 and should be reviewed in its entirety.
- 2. <u>Definitions</u>. See enclosure (1).

3. Applicability

- a. This instruction applies to the Naval Intelligence Activity (NIA) and its subordinated commands and activities. It applies to all personnel, supporting contractors, and consultants when contract performance includes any intelligence activities or intelligence-related activities. No program or activity will be exempt from the requirements of this instruction, regardless of sensitivity, classification, compartmentalization, or degree of restriction on access.
- b. Nothing in this instruction is intended to exempt NIA or its subordinate commands and activities conducting intelligence and intelligence-related activities from complying with any other reporting requirement regarding the conduct of those activities.

4. Policy

- a. Per references (a) thru (c), NIA, its subordinate commands and activities, their personnel, and supporting contractors and consultants must carry out their authorized intelligence and intelligence-related activities in strict conformity with the U.S. Constitution, applicable laws, Executive Orders (E.O.), and other relevant Intelligence Oversight (IO) directives as specified in references (a) through (j), and this instruction.
- b. Special emphasis must be given to the protection of the constitutional rights and privacy of U.S. Persons. The collection, retention, and dissemination of U.S. Person Information (USPI) will be governed by the requirements set forth in references (d) and (e). Note that intelligence and intelligence-related activities covered by this instruction are not limited to those that concern U.S. Persons.
- c. Per references (a) and (b), any activity or conduct that qualifies as either a Questionable Intelligence Activity (QIA) or a Significant or Highly Sensitive Matter (S/HSM) is reportable without waiting for substantiation, completion of an investigation, formal adjudication, or final resolution of the issue. Per reference (b), personnel must immediately report any suspected QIA or S/HSM to their chain of command or supervisor. If it is not practical to report a QIA or S/HSM to the chain of command or supervisor, personnel may report suspected QIA or S/HSM to the NIA Intelligence Oversight Official (IOO), NIA Inspector General (IG) or N2N6 legal counsel. Members within the chain of command or supervisors who receive reports will immediately refer reports of QIA or S/HSM to the NIA IOO, NIA IG or N2N6 Legal Counsel.
- d. Per reference (h), no adverse action will be taken against any personnel because they intend to report, report, or reported to appropriate authorities what they reasonably believe is a QIA or S/HSM. Similarly, no adverse action will be taken against DoD contractor personnel because they intend to report, report, or reported to the appropriate authorities what they reasonably believe is a QIA or S/HSM.
- 5. Responsibilities. See enclosure (2).
- 6. Quarterly IO Report Format Template. See enclosure (3).

7. <u>IO Inspection Checklist</u>. See enclosure (4).

6. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned per the records disposition schedules located on the Department of the Navy/Assistant for Administration (DON/AA), Directives and Records Management Division (DRMD) portal page at

https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/Records-and-Information-Management/Approved%20Schedules/Forms/AllItems.aspx.

- b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact the local Records Manager or the DON/AA DRMD program office.
- 7. Review and Effective Date. Per OPNAVINST 5215.17A, the NIA Intelligence Oversight Official (IOO) will review this instruction annually around the anniversary of its issuance date to ensure applicability, currency, and consistency with Federal, Department of Defense, Secretary of the Navy, and Navy policy and statutory authority using OPNAV 5215/40 Review of Instruction. This instruction will be in effect for 10 years, unless revised or cancelled in the interim, and will be reissued by the 10-year anniversary date if it is still required, unless it meets one of the exceptions in OPNAVINST 5215.17A, paragraph 9. Otherwise, if the instruction is no longer required, it will be processed for cancellation as soon as the need for cancellation is known following the guidance of OPNAV Manual 5215.1 of May 2016.

Releasability and distribution:

This instruction is cleared for public release and is available electronically only via Department of the Navy Issuances Web site https://www.secnav.navy.mil/doni/default.aspx

DEFINITIONS

- 1. <u>Counterintelligence (CI)</u>. Per reference (c), information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or their agents, or international terrorist organizations or activities.
- 2. <u>Foreign Intelligence (FI)</u>. Per reference (c), information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.
- 3. <u>Intelligence Activities</u>. Per reference (e), all activities that DoD Components conduct pursuant to reference (c).
- 4. <u>Intelligence Oversight (IO)</u>. Per reference (a), the process of independently ensuring all DoD intelligence, CI, and intelligence-related activities are conducted in accordance with applicable U.S. law, E.O.s, Presidential Directives, Intelligence Community (IC) Directives, and DoD issuances designed to balance the requirements for acquisition of essential information by the IC, and the protection of U.S. Constitutional and statutory right of U.S. Persons. IO also includes the identification, investigation, and reporting of Questionable Intelligence Activities (QIAs) and Sensitive/Highly Sensitive Matters (S/HSMs) involving intelligence or intelligence-related activities.
- 5. Intelligence-Related Activities. See references (a) and (b).
- 6. Questionable Intelligence Activities (QIA). Per reference (b), any intelligence or intelligence-related activity when there is reason to believe such activity may be unlawful or contrary to an E.O., Presidential Directive, IC Directive, or applicable DoD policy governing that activity.
- 7. <u>Shared Repository</u>. A database, environment, or other repository maintained for the use of more than one entity. A database, environment, or other repository that a contractor or other entity maintains for the use of a single Defense Intelligence Component, or those acting on its behalf, is not a shared repository.
- 8. <u>Significant or Highly Sensitive Matters (S/HSM)</u>. Per reference (b), an intelligence or intelligence-related activity (regardless of whether the intelligence or intelligence-related activity is unlawful or contrary to an E.O., Presidential directive, IC Directive, or DoD policy), or serious criminal activity by intelligence personnel, that could impugn the reputation or integrity of the IC, or otherwise call into question the propriety of intelligence activities. Such matters might involve actual or potential:
 - a. Congressional inquiries or investigations;
 - b. Adverse media coverage;

- c. Impact on foreign relations or foreign partners;
- d. Systemic compromise, loss, or unauthorized disclosure of protected information.

RESPONSIBILITIES

1. The Director, NIA will:

- a. Ensure all subordinate commands and activities comply with the requirements of references (a) through (j) and this instruction.
- b. Appoint in writing an IO Program Manager who is of appropriate grade and intelligence experience commensurate with their oversight responsibilities, who has the necessary clearance and is eligible for access to all of the organization's intelligence and intelligence-related activities (including those protected by special access programs (SAP), alternative compensatory control measures (ACCM), and other security controls), and, as per reference (b), who has direct access to the Director of NIA to report on intelligence oversight compliance.

2. The NIA Intelligence Oversight Program Manager will:

- a. Serve as NIA IOO and administering the NIA IO Program per references (a) and (b), and this instruction, and conduct program oversight of NIA subordinate commands and activities.
- b. Review, consolidate, and submit all NIA S/HSMs, QIAs, and Quarterly IO Reports to the DoD Senior Intelligence Oversight Official (SIOO) per references (a) and (b), coordinate with DON Special Access Program Central Office (SAPCO) on submission of reports requiring Special Access Program (SAP) protection. Copies of all reports will be provided to the NIA IG and the N2N6GC.
- c. Per reference (a), accompany and assist NIA IG with triennial inspections of NIA subordinate commands and activities to ensure oversight and compliance with references (a) through (f) and this instruction. Ensure these inspections include a review of the organization's, collection methods, intelligence products, and repositories for compliance with applicable standards.

3. The NIA Inspector General (IG) will:

- a. Inspect NIA and subordinate commands and activities on a 36 month schedule to ensure compliance with references (a) through (f) and this instruction. Enclosure (4) will be used as a baseline checklist during IO inspections of commands. Ensure results include a comprehensive review of all intelligence and intelligence-related activities under the organization's authority, direction and control.
- b. Maintain a cadre of appropriately cleared and qualified personnel to conduct reviews, inspections, and investigations. Ensure the timely reporting of inspection results and findings obtained to the appropriate NIA subordinate command or activity and Director, NIA.
- c. Investigate reported QIAs or S/HSMs to the extent necessary to determine the facts and to assess whether the activity complies with applicable policies per reference (d); and in

coordination with the servicing legal counsel, will refer any suspected criminal activity to appropriate law enforcement authorities per reference (g).

- 4. Directors, Commanders, Commanding Officers, and Officers-in-Charge of NIA's subordinate commands and activities will:
- a. Appoint an IO Representative who is of appropriate grade and intelligence experience commensurate with their oversight responsibilities, who has the necessary clearance and is eligible for access to all organization intelligence and intelligence-related activities (including those protected by special access programs (SAP), alternative compensatory control measures (ACCM), and other security compartments), and who has direct access to the command's senior leader in order to report on intelligence oversight compliance.
- b. In coordination with the servicing legal counsel, review intelligence and intelligence-related activities under the command's authority, direction, and control to verify compliance with federal law, Executive Orders, Presidential directives, IC Directives, and DoD and SECNAV issuances.
- c. Ensure legal reviews are conducted prior to commencing activity whenever a reasonable person would believe that the intelligence or intelligence-related activity may be contrary to federal law, E.O.s, Presidential Directives, IC Directives, and DoD issuances.
- d. Administer an IO training program that is tailored to mission requirements and provides initial and annual refresher IO training to all employees involved in intelligence and intelligence-related activities. At a minimum, training will include:
- (1) Familiarity with the authorities and restrictions established in references (b) and (c), and other applicable IC Directives and DoD issuances governing applicable intelligence and intelligence-related activities.
- (2) Responsibilities of DoD personnel and DoD contractor personnel for reporting QIAs and S/HSMs per (a).
- e. Conduct a periodic review of command produced intelligence products for compliance with reference (c) through (e).
- f. Submit S/HSM, QIA, and Quarterly IO report to the NIA Intelligence Oversight Official, and, as required, to the DON SAPCO, using the format in enclosure (3).
 - (1) S/HSM, will be submitted immediately to the NIA Intelligence Oversight Official.
 - (2) QIA will be submitted quarterly as part of the Quarterly IO Report.
- (3) The Quarterly IO Report is due to the NIA Intelligence Oversight Official three calendar days after the end of each quarter. Quarterly IO reports are based on calendar year; first

quarter January-March; second quarter April-June; third quarter July-September; and fourth quarter October-December.

- g. Refer every QIA or S/HSM to the NIA IG to determine, in coordination with legal counsel, the need for further investigation as per applicable policies and reference (b).
- h. Report to NCIS any possible violation of federal criminal law by an employee or a possible violation of specified federal criminal laws by any other person, as required in reference (g).
- i. Provide access to all intelligence and intelligence-related activities to appropriately cleared intelligence oversight, IG and legal representatives conducting IO responsibilities. Ensure employees of their organizations cooperate fully with such officials.
- j. Ensure all subordinate intelligence components, units, and elements in or under their command comply with the requirements of references (a) through (f), and this instruction.

QUARTERLY INTELLIGENCE OVERSIGHT REPORT FORMAT TEMPLATE

(On command letterhead as appropriate)

5240 Ser DD Mon YYYY

From: Your Command

To: Intelligence Oversight Official, Naval Intelligence Activity

(NIA Intelligence Oversight Official uses this "To" line for quarterly reports: To: Senior

Director for Intelligence, Deputy Under Secretary of the Navy)

Subj: QUARTERLY INTELLIGENCE OVERSIGHT REPORT - XX QUARTER CALENDAR YEAR 20XX (U)

Ref: (a) E.O. 12333, as amended

- (b) DoD Directive 5240.01
- (c) DoD Directive 5148.13
- (d) DoD Manual 5240.01 of 08 Aug 16
- (e) DoD Regulation 5240.1-R Incorporating Change 2, Effective 26 Apr 17
- (f) SECNAVINST 3820.3F
- 1. (U) Per references (a) through (f), this report is submitted for the period of dd month yyyy to dd month yyyy.
- 2. (Classification) New Incidents: For example, There are two new incidents to report; all are Questionable Intelligence Activities (QIA).
- a. (U) File Number: enter your command case #. Each case # should end in either a Q or a S to indicate whether the case is a QIA or a S/HSM. For example, "NAV-2017-01-Q."
- (1) (Classification) Incident Description: the incident description section should be able to stand on its own and include who, what, when and whether any allegations are substantiated, not substantiated, or under investigation.

(2) (U) Timeline:

- (a) (Classification) Occurred: dd month yyyy. For example, "12 January 2018" or "November 2017 to February 2018."
- (b) (Classification) Discovered: dd month yyyy. For example, "15 February 2018"."
- (c) (Classification) Reported to NAVINSGEN: For example, this report or 23 August 2017 via memorandum for the record, phone, email, etc.

- (3) (Classification) Reason for Report: For example, QIA, in violation of DoD Manual 52401.01 Para 3.3.c.2 and Para 3.3.f.2.
- (4) (Classification) Cause: Indicate why the incident occurred. If still under investigation "Pending investigation" is an acceptable answer.
- (5) (Classification) Impact on National Security or International Relations: none, to be determined, yes, likely, or no impact is anticipated. For yes or likely answers, include a brief explanation of how incident will impact national security or international relations.
- (6) (Classification) Impact on Civil Liberties or Privacy: none, to be determined, yes, likely, or no impact is anticipated. For yes or likely answers, include a brief explanation of how incident will impact civil liberties or privacy. For example, "Yes, USPI was collected without proper authorities and improperly retained."
- (7) (Classification) Remedial Action: an explanation of action taken or planned to prevent recurrence of the incident.
- (8) (Classification) Additional Information: Any additional information not already reported that you considered relevant for purposes of fully informing Senior Leadership about the incident. If none then mark the section "None."
- (9) (Classification) Status: Indicate whether the incident is open or closed. If open, provide the status of the ongoing investigation. If closed, include a notation indicating whether any allegations were substantiated or not substantiated. For example, "closed, substantiated" or "Open, investigation was formally commenced by NAVINSGEN on 10 April 2018 and assigned Naval Inspector General Tracking System case #12345."
- 3. (U) Updates on Previously Reported Incidents: Use the same format as Section 2 for previously reported incidents still under investigation as well as those resolved and closed during the quarter. Update should contain enough information that the report can stand on its own without reading original report.
- 4. (U//FOUO) Crimes Reported: Provide a narrative summary of any intelligence or intelligence-related activity that has been or will be reported to the U.S. Attorney General, or that must be reported to the U.S. Attorney General as required by law or other directive, including crimes required by E.O. 12333 to be reported to the U.S. Attorney General. If none then mark the section "None."
- 5. (U//FOUO) Trend Reporting: identify and explain common causal factors for QIAs and S/HSMs. Include supporting data and metrics supporting the analysis. If none then mark the section "None."
- 6. (Classification) Significant Inspection Findings or Intelligence Oversight (IO) Program Developments: Provide a description of any significant internal inspection findings or intelligence oversight program developments (e.g. training initiatives, awareness, indoctrination,

familiarization, published documents, new instructions or policy). Examples of significant inspections findings are: "DoD Needs to clarify the definition of intelligence-related activities and whether or not all RDT&E sensor development meets the criteria of "devoted to research and development of intelligence or related capabilities." A clear understanding is needed due to the recent change of a QIA definition to included intelligence-related activities." — or — "A DoD IO computer based training module would greatly improve DON's ability to provide standardized training by addressing the IO core concepts from the DoD-wide perspective. This baseline training would also serve as a common launching point for commands to build supplemental IO training and keep them aligned with wider DoD goals, lessons learned, and best practices."

Include a summary of any IO training conducted in the previous quarter If none then mark the section "None."

7. (U//FOUO) IO Inspections Conduct This Quarter: identify any subordinate commands that were inspected during the quarter in the following format.

COMMANDINSPECTION DATECommand AlphaDD Month YYYYCommand Bravo Det OneDD Month YYYY

8. (U) IO POC is xxxxx, rank and job title,(xxx)xxx-xxxx, firstname.lastname@navy.mil.

SIGNATURE BLOCK

Copy to:

BASELINE INTELLIGENCE OVERSIGHT INSPECTION CHECKLIST

	INTELLIGENCE OVERSIGH						
Th	This checklist is intended as a baseline only. The inspecting organization will provide the specific checklist for the inspection being conducted.						
Ins	pected Organization:	Inspector(s):	Date:				
(a) (b) (c) (d) (e) (e)	rences: 2.O 12333, as amended 2.DoD Directive 5240.01 of 22 March 2019 2.DoD Manual 5240.01,"Procedures Governing the Conduct of DoD 2.DoD Regulation 5240.1-R,"Procedures Governing the Activities of 2.DoD Directive 5148.13 of 26 April 2017 2.DoD Directive 5148.13 of 26 April 2017 2.DoD Directive 5148.13 of 2 January 2020 Part 1: Governance Does your organization have an IO Instruction, Standard Operation	DoD Intelligence Components that Affect	6 United States F	Persons,"			
	Remarks:			□ No			
2	Does your organization have a designated Intelligence Oversight - Is the IOO of appropriate grade and intelligence experience con has access to all organization intelligence and intelligence-related programs, alternative compensatory control measures, and other the organization commanding officer/director/head to report on in (DoD Directive 5148.13 para 2.4.h and SECNAVINST 3820.3F II Remarks:	nmensurate with their oversight responsible discrivities (including those protected by spaceurity compartments) and who has direct ntelligence oversight compliance?	pecial access	☐ Yes			
3	Does your organization have a process for reviewing command in under the organization's authority, direction, and control to verify Presidential directives, Intelligence Community Directives, DoD, Does the process include a legal review when required, or approsis process codified in an instruction or standard operating process (DoD Directive 5148.13 para 2.4 a and SECNAVINST 3820.3F & Remarks:	y compliance with applicable federal law, , and SECNAV issuances? priate? dure, etc.?	ted activities E.O.'s,	Yes			
4	Does your organization verify that all contracts involving intellig those efforts under DoD authorities requires personnel to report a identified in the contract? (DoD Directive 5148.13 para 4.1.e and SECNAVINST 3820.3F E	any QIA or S/HSM to appropriate Government	pporting nent officials	Yes			

5	Does your organization provide the DON organization legal counsel/SJA, GC/JAG/SJA to CMC, DUSN, DUSN Intelligence IOO, and any IG of competent jurisdiction with access to any employee and with all information necessary to perform their IO oversight responsibilities, including information protected by SAP, alternative compensatory control measures, or other security compartmentalization? -Is the organization IG and legal counsel cleared to all programs/activities? (DoD Directive 5148.13 para 2.4.g and SECNAVINST 3820.3F Enclosure (2) para 1.c., para 5.i) Remarks:	☐ Yes
6	Does your organization host or participate in a shared repository (database)? - If so, does the shared repository contain USPI? - Is the shared repository with USPI maintained IAW DoDM 5240.01? - Is there an instruction, SOP of Manual for preventing a violation when storing or accessing the shared repository (database)? (DoDM 5240.01 3.1.b) Remarks:	Yes
	Part 2: Reporting	
7	Does your organization have a process to report S/HSM and QIA?	Yes
	- Immediately for S/HSM	☐ No
	- Quarterly for QIA - Format in accordance with DoD SIOO and current DON template?	
	(DoD Directive 5148.13 para 4.1.d, 4.3.a, 4.4.a, 4.4.b, and Figure 1 and SECNAVINST 3820.3F Enclosure (2) para 5.e and Enclosure (3))	
	Remarks:	
8	Does your organization have a process to report any crimes involving any intelligence activity or intelligence-related activity to NCIS?	Yes No
	(DoD Directive 5148.13 para 4.3.a(3) and SECNAVINST 3820.3F Enclosure (2) para 5.h)	
	Remarks:	
9	Does your organization submit quarterly IO reports?	☐ Yes
	 Due NLT 5 calendar days after end of reporting quarter Format in accordance with template The Heads of DON organizations, including SYSCOMS, Program Executive Officers, and Heads of Naval Academic Institutions, that conduct intelligence or intelligence-related activities are responsible for submitting S/HSM, QIA, and Quarterly IO report to the DON Intelligence Oversight Official using the format in Enclosure (3). (DoD Directive 5148.13 para 4.4.b, & Figure 1, and SECNAVINST 3820.3F enclosure (2) para 5.e & enclosure (3)) Remarks: 	□ No

	Part 3: Training	_
10	requirements (initial and annual refresher)? - At a minimum, IO training will include: (1) Familiarity with the authorities and restrictions established in DoDD 5240.01, DoDM 5240.01, and other applicable Intelligence Community Directives and DoD issuances governing	
	applicable intelligence activities. -Responsibilities of DoD personnel and DoD contractor personnel for reporting QIAs and S/HSMs - What is the process for tracking and documenting training? - Does all senior leadership, with cognizance over intelligence or intelligence-related activities, receive IO training?	
	(DoD Directive 5148.13 para 2.4.c and SECNAVINST 3820.3F Enclosure (2) para 5.c)	
	Remarks:	
11	Do individuals at the organization understand: - What constitutes a S/HSM, QIA, and USPI? - S/HSM and QIA reporting responsibilities (report immediately to their chain of command or supervisor)? -Restrictions established in DoDD 5240.01 and DoDM 5240.01?	Tes No
	(DoD Directive 5148.13 para 2.4.c, 4.1.d and SECNAVINST 3820.3F Enclosure (2) para 5.d)	
	This question is used to determine effectiveness of intelligence oversight training.	
	Remarks:	
	Part 4: Inspections	
12	Does your cognizant Command IG conduct IO inspections on all components, units, and elements in or under your command at an interval of no greater than once every 36 months, with appropriate follow-up/"spot checks" or assistance between inspections as deemed necessary?	Yes
	(DoD Directive 5148.13 para 4.1.b through d and SECNAVINST 3820.3F Enclosure (2) para 5.f)	
	Remarks:	
	Part 5: Investigations	
13	Does your cognizant Command IG conduct IO investigations into alleged QIAs and S/HSMs to the extent necessary to determine the facts and to assess whether the activity is legal and consistent with applicable policies?	☐ Yes
	- Investigations will require a written report that includes a description of the incident and a determination of whether the allegation was substantiated. If the allegation is substantiated, the report will include findings of fact, an assessment of the cause, and recommended remedial action to prevent recurrence?	
	- How are they referred to IG?	
	- How are they referred to IG? (DoD Directive 5148.13 para 4.2.a through 4.2.d and SECNAVINST 3820.3F Enclosure (2) para 5.g)	

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Inspecting Official (Print Name, Title, Phone)	Inspecting Official's Signature and Date